IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9246 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K.S. BASTHIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9246 of 2002

MR TV SHAH for Petitioner No. 1

MR S.N.SHELAT ADVOCATE GENERAL with

Ms.Shruti D. Trivedi AGP for Respondent no.1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 11/09/2002 passed by the respondent State Government at Annexure 'A' to the petition, whereby the

petitioner was removed from Government service with immediate effect.

2.0 The petitioner was appointed in the Gujarat Administrative Service, Class-I (Deputy Collector) by the respondent Government in December 1989 as a direct recruit. In due course, the petitioner was appointed as a Deputy District Development Officer, Amreli. By order dated 05/08/1992 the petitioner was suspended from service, pending departmental inquiry, for alleged misconduct. On 16/07/1993 the respondent Government issued charge sheet against the petitioner for departmental inquiry for two charges at Annexure 'C' to the petition; first, was with respect to the conduct of the petitioner with the Trainee Nurses of Female Health Workers Training School, Amreli; and, second was with respect to the alleged use of Government vehicles for his personal visits during the period from 11/07/1992 to 14/07/1992.

2.1 The petitioner submitted his reply, vide reply dated 24/11/1993 denying the said charges at Annexure 'D' to the petition. The respondent Government vide order dated 30/07/1994 appointed Commissioner for Departmental Inquiry, Gujarat State, as the Inquiry Commissioner. The Inquiry Commissioner submitted his report dated 14/11/1995 with a finding that the charges levelled against the petitioner were not proved.

2.2 The Government vide order dated 01/10/1996 remanded the matter back to the Inquiry Commissioner for re-inquiry under Rule 10(1) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 at Annexure 'F' to the petition. The Inquiry Commissioner submitted his report dated 31/12/1998 with a finding that none of the two charges against the petitioner were proved.

2.3 The State Government vide Notice dated 16/03/2001, at Annexure 'I' to the petition submitted that in view of the personal diary of the petitioner for the year 1992 and the handwriting thereof, being a responsible Officer, the mentality and activities of the petitioner were highly unbecoming of a Government servant. The personal diary and handwriting opinion were taken as evidence against the petitioner which came to be considered as moral turpitude. In view of Rule 3(1)(iii) of the Gujarat Civil Services (Conduct) Rules, 1971 the petitioner was called upon by the respondent State Government, which was responded by the petitioner by reply dated 20/04/2001. Thereafter, the petitioner was served with the impugned order dated 11/09/2002, whereby

the punishment of removal from Government service was imposed on the petitioner. Hence, this petition.

3.0 Mr.T V Shah learned advocate for the petitioner has submitted that the Inquiry Commissioner has not accepted the evidence of witness Mr.Nagori on the ground that the same was not permitted under Rule 9(14) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. Rule 9(14) of the said Rules reads as under;

"Rule 9(14) : If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiry Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the government servant or may itself call for new evidence of recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiry Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiry Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note : New evidence shall not be permitted or called for and no witness shall be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacunae or defect in the evidence which has been produced originally."

3.2 Mr.Shah for the petitioner has submitted that in view of the above findings, the Government should not have removed the petitioner from service. Therefore, the impugned order of the State Government is bad in law and is required to be quashed and set aside.

4.0 Mr.S N Shelat learned Advocate General appearing for the respondent Government has submitted that under Rule 10(1) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 inquiry was re-started by the Government, pursuant to the order dated 01/10/1996 and it was therefore open for the State Government to adduce new evidence. Therefore, the Inquiry Commissioner has committed an error of law, in accepting the evidence of witness Mr.Nagori. He has further submitted that the

Notice dated 16/03/2001 at Annexure 'I' to the petition clearly establishes the fact that apart from any other evidence, the personal diary of the petitioner establishes his misconduct which is highly unbecoming of a Class I Officer.

4.1 Mr.Shelat for the respondent Government has placed reliance on a decision of the Apex Court in the case of State of Punjab & Ors. v. Ram Singh, Ex.Constable reported in A.I.R. 1992 SC 2188. Para 4 of the said decision is relevant which reads as under;

"4. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :-

"A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as :

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P.Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821 `misconduct' defines thus :-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a

forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6.0 Mr.Shelat has also relied upon a decision of the Apex Court in the case of High Court of Judicature at Bombay through its Registrar v. Udaysingh S/o Ganpatrao Naik Nimbalkar and Ors. reported in A.I.R. 1997 SC 2286. Para 10 of the said decision is relevant which reads as under;

"10. The only question is; whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Art.226 of the Constitution of India was taken away by the power under Art.323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal, when the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/ Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.Chaturvedi v. Union of India (1995) 6 SCC 749 : (1995 AIR SCW 4374), State of T.N. v. T.V.Venugopalan, (1994) 6 SCC 302 : (1994 AIR SCW 3947)

(SCC para 7), Union of India v. Upendra Singh (1994) 3 SCC 357 : (1994 AIR SCW 2777) (SCC para 6), Govt. of T.N. v. A.Rajapandian, (1995) 1 SCC 216 : (AIR 1995 SC 561) (SCC para 4) and B.C.Chaturvedi v. Union of India (1995 (6) SCC 749) (at pp.759-60) : (1995 AIR SCW 4374). In view of the settled legal position, the Tribunal has committed serious error of law in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside / OA/TP/WP stands dismissed."

6.1 In view of the aforesaid observations of the Apex Court, Mr.Shelat has submitted that no interference is called for by this Court in the matter.

7.0 I have heard Mr.T V Shah learned advocate for the petitioner and Mr.S N Shelat learned Advocate General for the respondent State Government. It may noted here that the petitioner had tried to win over the witnesses and that the Inquiry Commissioner had not believed the evidence of witness Mr.Nagori. Therefore, the report might be in favour of the petitioner, but, looking to the allegations made against the petitioner and on going through his personal diary, the action adopted by the State Government in removing him from service is found to be just and proper. No interference is required under Article 226 of the Constitution of India. Therefore, the petition is required to be dismissed for loss of confidence.

8.0 From the evidence on record, it is clear that the petitioner has been afforded reasonable opportunity to defend his case. The State Government further found that the conduct of the petitioner amounted to moral turpitude and that the petitioner had acted in a manner not befitting to a Government Officer. In view of the conduct of the petitioner and when the authorities have lost confidence in him, then it would not be appropriate for this Court to direct the authority to continue the petitioner in service. This Court will not sit in appeal and substitute the decision of the State Government.

9.0 For the foregoing reasons, this petition is dismissed. Rule is discharged with no orders as to costs.

(K. S. Jhaveri, J.)
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